LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
SEP 1 3 1952

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

ARCHIBALD MCGRATH,
Counsel for Respondent;
39 Broadway,
New York City.

RICHARD M. CANTOR,
GEORGE HALPERN,
of Counsel.

INDEX

PAGE

THE QUESTION 1

THE FACTS 2

POINT I—The circumstances herein stem from activities in the United States which profoundly affect its public welfare and require the application of its maritime laws 4

POINT II—Our legislative and judicial history is replete with statutes and cases applying American law to foreign ships, shippers, passengers and seamen, not excluding foreign contracts and commercial documents 7

POINT III—The facts herein are within the purview of the Jones Act under the rationale of the Kyriakos and Taylor cases 9

POINT IV—The cases cited by petitioner create neither conflict nor doubt as to the soundness of the decision below and require no action by this Court 13

CONCLUSION 19

CASES CITED

The Belgenland, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152 (1884) 7, 16

Cortes v. Baltimore Insular line, 287 U. S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932) 14

Farrell v. United States, et al., 336 U. S. 511 (1949) 18

Gambera v. Bergotty, 132 F. (2d) 414, 1943 A. M. C. 45 (2 Cir., 1942), cert. den. 319 U. S. 742, 63 S. Ct. 1030, 87 L. Ed. 1699 15

Garrett v. Moore-McCormack, 317 U. S. 239, 63 S. Ct. 246 12

PAGE

Gerradin v. United Fruit Co., 51 F. 2d 417, aff'd 61 F. 2d 927, 2 Cir., 1932, cert. den. 287 U. S. 642 ..... 15, 16

Grand Trunk Ry. Co. v. Wright, 21 F. (2d) 814 (6 Cir., 1927), affirmed 278 U. S. 577, 59 S. Ct. 176, 73 L. Ed. 516 17

Jamison v. Encarnacion, 281 U. S. 635, 50 S. Ct. 440, 74 L. Ed. 1082 (1930) 14

Kyriakos v. Goulandris, 151 F. (2d) 132, 1945 A. M. C. 439 (2 Cir., 1945) 4, 9, 10, 11, 13, 15, 17, 18

New York Central R. R. Co. v. Chisholm, 268 U. S. 29, 45 S. Ct. 462, 69 L. Ed. 828 (1925) 13, 14

O'Donnel v. Great Lakes Co., 318 U. S. 36, 63 S. Ct. 488 ..... 11, 13, 14

O'Neill v. Cunard White Star, Ltd., 160 F. (2d) 446, 1947 A. M. C. 565 (2 Cir., 1947) 16, 17

Patterson v. Bark Eudora, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903) 7, 9, 10, 16

The Paula, 91 F. (2d) 1001, 1937 A. M. C. 988, (2 Cir., 1937) cert. den. 302 U. S. 750, 58 S. Ct. 270 ..... 2, 15

Plamals v. S.S. Pinar Del Rio, 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827 (1928) 14

The Quoge, 261 Fed. 414, aff'd 266 Fed. 696 (4 Cir., 1920) 12

Resignio v. Jarka, 248 N. Y. 225 (1928) 16

The Scotland, 105 U. S. 24, 26 L. Ed. 1001 (1881) 7, 16

Sonnesen v. Panama Transport Co., 298 N. Y. 268, 82 N. E. (2d) 569 (1948), cert. den. 337 U. S. 919, 69 S. Ct. 1157 ..... 15, 16

Stewart v. Pacific Navigation Co., Ltd. (S. D. N. Y., 1924), 3 F. 2d 329 10

PAGE

Strathearn S. S. Co. v. Dillon, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607 (1919) 7, 9, 10, 16

Taylor v. Atlantic Maritime Co., 179 F. (2d) 597, 1950 A. M. C. 352 (2 Cir., 1950), cert. den. 341 U. S. 915, 71 S. Ct. 736 ..... 1, 2, 4, 7, 11, 13, 15, 17, 18

Thompson Towing & Wrecking Association v. McGregor, 207 F. 209 (6 Cir., 1913) 17

The Titanic, 233 U. S. 718 (1913) 8

United States v. Rodgers, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071 (1893) 17

Uravic, Administratrix v. F. Jarka Company, Inc., 252 N. Y. 530, rev. 282 U. S. 234, 51 S. Ct. 111, 75 L. Ed. 312 (1931) 14, 16

The Western Maid, 257 U. S. 419, 42 S. Ct. 159 7

Wildenhus's Case, 120 U. S. 1, 7 S. Ct. 385, 30 L. Ed. 565 (1887) 17

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent.

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

The Question

Should the rule, as stated in *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597, 2 Cir., cer. den. 341 U. S. 915, 71 S. Ct. 736, be reviewed again?

That rule established the rationale that the Jones Act imposed its terms on all owners who signed on crews in an American port.

The controlling and pivotal facts in this cause and the *Taylor* case are the same.

No compelling reason for review is offered.

Neither the circumstances nor the cases relied on disclose any material variance from those presented to this Court in the *Taylor* case. There is neither conflict nor disharmony requiring action by this Court.

Petitioner has predicated his argument on the assumption that an "all-foreign" problem is involved, affecting only the internal economy of the vessel and without effect

upon the United States. Therefore, the "law of the flag" should be applied.

That is not so.

Foreign shipowners, including this petitioner, do operate within the stream of our commerce and they do exercise a substantial impact on our economy. Neither right nor reason justifies granting them extraterritorial privileges within our jurisdiction.

It has been long established that our courts have jurisdiction of suits between foreign citizens and that the maritime law, as understood by our courts and enacted by our Congress, will be applied.

The rule of the *Taylor* case does not favor American vessels and seamen to the detriment of foreign owners; on the contrary, it rectified the unjust unbalance favoring the latter.

The rule in question places all who use American ports and facilities on a parity, aliens and citizens alike, giving life and meaning to our cherished principle of equality under own laws.

The Facts

To supply omissions and correct erroneous inferences to be drawn from petitioner's statement of the facts, it would be well to restate the salient circumstances of this case.

Both parties are Danish citizens.

Petitioner, a shipowner, registered under the Danish flag, has been engaging in the shipping trade between the United States and Chile, prior to 1937, according to the record in "*The Paula*", 91 F. 2d 1001 (2 Cir., 1937).

Respondent, a seaman, signed Articles in New York on July 25, 1946, to serve aboard the *SS. Randa*, for a voyage from and to New York (fols. 75, 138). The Articles merely stated "a voyage to South America and other places".

Petitioner admitted that the Articles called for an indefinite service (fols. 139, 145), thus contravening the laws of the forum where made, rendering them void and subject to a liberal interpretation in favor of the seaman.

The vessel did return to New York and respondent had a right to expect such return (Pre-Trial Order and admission, fols. 46 and 145).

Defendant's Exhibit A (p. 45), the Articles, show that the last two seamen listed thereon, who signed on with respondent in New York, signed off in New York on October 14, 1946, only seven days after respondent's injury in Havana. Thus petitioner's own exhibit nullifies his claim and establishes a voyage from and to New York.

The same exhibit shows that although the vessel flew the Danish flag, *not one seaman* listed signed on or off in Denmark.

The Articles provided for wages at a scale fixed between Danish operators and Unions.

While on the return voyage, petitioner was injured aboard the vessel at Havana, Cuba, on October 7, 1946, while in its service, due to fault attributable to petitioner.

He was hospitalized in Havana, Cuba.

He was returned to the United States aboard another vessel owned by petitioner (fol. 47).

He was again hospitalized at the U. S. Marine Hospital, Ellis Island, N. Y. (fol. 47).

He was paid one week's wages, the equivalent of wages to the end of the voyage, and he received medical care. The proof established and the jury found that he did not receive full maintenance nor any compensation for his injury. Thus there is no basis for petitioner's claim that respondent elected to receive or did receive any benefits under the Danish law.

Service of the summons and complaint herein was effected upon petitioner by serving J. Lauritzen Agency, Inc., a domestic corporation, at 67 Broad Street, N. Y. C. An affidavit of this service is on file with the papers herein in the U. S. District Court for the Southern District of N. Y.

Attorneys for petitioner appeared herein on May 20, 1947 (fols. 19-21), and interposed an answer. (fols. 22-27). Such answer did not raise any defense to the applicability of the Jones Act and at no time was the validity, propriety or jurisdiction of the service questioned.

By stipulation dated May 7, 1951, and order entered May 11, 1951 (p. 10), four years later, the amended answer was filed and served.

The Trial Court ruled, and the jury found, that there was no valid agreement to be bound by Danish law.

The question of negligence was proven and submitted to the jury. The jury verdict was in favor of respondent in the sums of $4,052.50 for damages and $215 for maintenance.

On appeal to the United States Court of Appeals for the Second Circuit, the judgment was sustained on the authority of *Kyriackos* v. *Goulandris*, 2 Cir., 151 F. 2d 132, and *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915.

POINT I

The circumstances herein stem from activities in the United States which profoundly affect its public welfare and require the application of its maritime laws.

The petitioner suggests that we are dealing with an "all foreign" situation concerning a foreign owner, office, enterprise, seaman and place of injury, affecting exclusively the internal economy of the vessel, with which this country is in no way concerned.

The contrary is true.

We deal here with a foreign seaman, hired in the United States, under Articles that were signed in the United States. Larsen, the respondent, shipped on a voyage which started and ended in the United States, and he received medical treatment in the United States at a U. S. Marine Hospital as well as at the Long Island College Hospital.

We are also concerned with a shipowner, whose vessels fly a foreign flag, who for many years has regularly engaged and is now engaging in the shipping trade between the United States and Chile and intermediate points. His agent and business alter ego bears his name, J. Lauritzen

Agency, Inc. It is a domestic corporation with offices at 67 Broad Street, N. Y. C.

The jurisdiction of our Courts was conceded when this corporation appeared in this action without questioning the validity of the service herein.

Unquestionably, this petitioner has usurped a position in our foreign commerce, thereby affecting our economy. Such position implicitly requires him to be subjected to our laws with even greater urgency than in the instances where police-powers are involved.

This is not an isolated incident in the American shipping trade. It is symptomatic of the challenge presented by foreign shipowners to the American Merchant Marine and the seamen dependent upon it.

The official and reported records of the New York Customs office for the fiscal year July 1, 1951 to June 30, 1952, shows the comparative number and tonnage of vessels entering and clearing the Port of New York alone:

	Entered		Cleared	
	Vessels	*Tonnage*	*Vessels*	*Tonnage*
American	4,866	21,694,804	4,864	21,661,193
Foreign	3,525	16,620,261	3,420	15,358,767

Furthermore, it is a matter of common knowledge that a very substantial number of foreign flag vessels, of nations having little commerce to justify so large a fleet, operate in large measure from and to our ports, maintain regular schedules and rarely, if ever, put into their so-called home ports.

Many of these operators, with the aid of their Government and their seamen's Unions, operate quarters, hiring halls and other facilities for their seamen in American ports. They also use U. S. Public Health and other facilities of our nation.

The aforesaid facilities are indispensable to foreign shipowners who need a pool of foreign seamen in this country

to implement the myth of exclusively foreign flag vessels. Otherwise, they would be compelled to hire American seamen, at higher American wages and better standards for maintenance, cure and liability damage.

It is also a matter of common knowledge that these foreign shipowners maintain agents in this country (exclusive of those who use the foreign flag as a mere blind). Many of these bear the same name as the foreign owning company. For example:

Foreign Line	*American Counterpart*
J. Lauritzen	J. Lauritzen Agency, Inc.
Fernley & Eger	Fernley & Eger, Inc.
Wilhelmsen	Barber Steamship Co., commonly known as Wilhelmsen-Barber Lines
Oivind Lorentzen	Oivind Lorentzen, Inc., with two sons residents of New York, doing business at the corporate office

Under such circumstances, we are compelled to conclude that these foreign flag vessels are actually engaged in the American shipping trade.

From the very beginning of our national existence, it has been the policy of the United States to construct and maintain a Merchant Marine. To that end, we have subsidized and are subsidizing this endeavor. We train seamen for that purpose at Government expense and afford them fair wages and humane safeguards for their safety and health as an inducement to the best elements of our manhood to engage in the Merchant Marine as a life's work.

As a matter of enlightened self-interest, should we permit foreign operators with lower costs, operating in American trade, to hire seamen in our ports, free from our remedial statutes, thus giving them a greater competitive advantage to the further detriment of our Merchant Marine and its seamen?

In keeping with our doctrine of fostering world trade, we do not seek to eliminate them or to give any improper advantage to our Merchant Marine. However, in using our ports and facilities, foreign operators should be subject to the same laws as are the American operators.

The *Taylor* case and the instant one merely tend to remove inequality.

POINT II

Our legislative and judicial history is replete with statutes and cases applying American law to foreign ships, shippers, passengers and seamen, not excluding foreign contracts and commercial documents.

Petitioner urges that the General Maritime Rule of the "Law of the Flag" is paramount to American law as applied to vessels using our ports.

As this Court so aptly stated in *"The Western Maid"*, 257 U. S. 419 (432), "there is no mystic over-law to which even the United States must bow" and that the General Maritime Rules are valid only to the extent that they are "accepted and adopted by the United States".

In *Patterson* v. *Bark Eudora*, 190 U. S. 169, 176 (1903), this Court stated the rule to be:

> "Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects itself to the jurisdiction of this country."

In *Strathcarn SS. Co., Ltd.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 350 (1919), this Court gave a foreign seaman, signing on a foreign vessel in a foreign port, the right to sue in our courts for relief under our wage laws, in spite of the fact that he signed a contract abroad which denied him such rights.

While *The Scotland*, 105 U. S. 24 (1881), and *The Belgenland*, 114 U. S. 355 (1884), are not directly in point, involving, as they do, collisions on the high seas, nevertheless

it is pertinent that early authority is cited for a long standing precedent in the application of the "law of the forum" and not the "law of the flag" to foreign owners.

The Titanic, 233 U. S. 718 (1913), broadened the base of the application of our laws to two foreign citizens of the same nationality for a tort on the high seas.

It is significant that the British claimant, Mellor, in opposing the application of the British shipowner for relief under American limitation statutes, offered the same arguments as does the petitioner herein.

It was claimed that on land the lex loci delicti was universally applied; that on sea it was the law of the flag; that the vessel flying the British flag, made British law the lex loci delicti, thereby fixing the limit of its liability; and that the statutes of a State or Nation have no extraterritorial effect, otherwise a shipowner would be subjected to different liabilities in different jurisdictions for the same event.

Mr. Justice Holmes disposed of the last argument by holding that the fact that the British owner might be sued in many jurisdictions, subject to local rule in each case, with divergent results and different liabilities, was not a valid reason for denying application of the American statute. The diverse nationalities of the various claimants was not controlling, since there was a separate appeal filed by the British subject.

While it is true that British tort obligations are generally created by British law, Mr. Justice Holmes noted the well recognized exceptions when he wrote (p. 732):

> "But it is also true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to public policy, or may decline to enforce it except within such limits as it may impose. Cuba Railroad Co. v. Crosley, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed., 647. It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out."

It is also noteworthy that in the *Bark Eudora* and the *Strathearn* cases, supra, the parties were also of the same nationality. Nevertheless, in the latter case American law was applied in direct contravention to the terms of a contract, valid where made.

Thus our courts have declared that the "law of the flag" is not a sacred doctrine superior to the law of our land.

The Jones Act is declarative of the rights of all seamen whose owners submit themselves to our jurisdiction by signing them on in our ports.

Nor does the Jones act stand alone as a legislative mandate applying to foreign owners and seamen using our ports. The Harter, Limitation of Shipowner's Liability, High Seas Death, Stand-by, Passenger and other statutes, equally subject, and accord privileges to, foreign citizens.

Thus it is clear that our Legislature and our courts have set the standards of the laws of the United States in the very areas which it is claimed the "Law of the Flag" must apply. The Jones Act is only one of the many such laws, regulations and doctrines so applied to foreign shipowners and seamen who use our ports.

If our laws are applicable to foreign shipowners, when to their advantage, to foreign passengers, to commercial documents valid where drawn, reason and justice demand that they be applied for the benefit of the seamen who make possible the carriage of goods and passengers from and to the United States.

POINT III

The facts herein are within the purview of the Jones Act under the rationale of the *Kyriakos* and *Taylor* cases.

The Jones Act applies to all seamen, foreign as well as citizens of the United States.

In *Kyriakos* v. *Goulandris*, supra, Judge A. N. Hand wrote:

> "When Congress used the word 'seamen' in the Jones Act it employed a word of general application, embracing men of any nation who sail the seas. Had it wished to limit the application of the statute to seamen of American citizenship or residence, the words to effectuate the limitation were at hand. The legislature did not see fit to use them."

The opinion, too lengthy for inclusion herein, fully discusses the doctrine of the "Law of the Flag", its limitations as established in the *Patterson* and *Strathearn* cases, supra, and concludes that such prior decisions and the liberal interpretation of statutes in aid of seamen confirms the right of foreign seamen, signing on in American ports for voyages on foreign vessels, to bring suit under the Jones Act.

The reasoning is clear and unassailable.

Judge Learned Hand, in his dissenting opinion, stated "There is much temptation to affirm this decree—", but harks back to the theory of the "Law of the Flag" and the "internal economy of the vessel".

His dissent is rather surprising in view of his previously very strong opinion in *Stewart* v. *Pacific Navigation Co., Ltd.* (S. D. N. Y., 1924), 3 F. 2d 329, wherein he rejected petitioner's concept that under the Jones Act "no action can be brought against a foreign corporation" and held that foreign corporations are suable under this Act.

But even more surprising is his failure to balance the vessel's internal economy with that of the nation which is its host.

Certainly it cannot be denied that the "Law of the Flag" must give way to the forum, not only on police powers, but where the paramount interests of the nation are involved. Otherwise, we would have an abdication of sovereignty, which no government would concede.

In favoring the economy of the foreign vessel, we would be giving it an unfair advantage over our vessels and our

seamen, while in rejecting this concept, which we have the right and duty to do, we are not giving any advantage to our vessels to the detriment of the foreign. We merely place all on a parity within the provisions of our laws.

However, in the *Taylor* case, supra, Judge Learned Hand decided the issues herein when, in discussing the *Kyriakos* case, he said:

> "* * * and the rationale of that opinion went further; and that it construed the Jones Act as imposing its terms on all owners who sign on crews in an American port."

Every pivotal and controlling fact herein is similar to those in the *Kyriakos* and *Taylor* cases.

Residence and place of injury are merely incidental and are not controlling.

In *O'Donnel v. Great Lakes Co.*, 318 U. S. 36, 63 S. Ct. 488, the jurisdiction of the Jones Act was disputed as to an injury incurred on land, to a seaman serving on a vessel engaged on an intrastate voyage. While the facts are not the same, the shipowner there raised the same issue as does petitioner, claiming that the jurisdiction of a tort is governed by the place of injury under the Jones Act.

This Court rejected such theory and Mr. Chief Justice Stone probed the fundamentals of the Jones Act jurisdiction and pointed out that neither maritime rules nor our admiralty law had previously provided a remedy for negligence against an employer, and that the Act was an enlargement of our substantive law and was not restrictive in its remedy, holding "that there is nothing in the legislative history of the Jones Act to indicate that its words 'in the course of his employment' do not mean what they say" and concluded that the Act applied whether the vessel engaged in interstate commerce or not, stating (p. 42):

> "The right of recovery in the Jones Act is given to *the seaman as such*, and as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends *not on the place where the injury is inflicted* but

on the *nature of the service* and its relation to the operation of the vessel plying in navigable waters." (Emphasis ours.)

On the facts herein, there is no valid basis for the rejection of Jones Act jurisdiction in favor of Danish law.

Petitioner's argument also proceeds on the assumption that there was a valid contract to apply Danish law. This issue was presented at the trial below and it was found that there was no binding agreement.

It is axiomatic that Articles are a simple contract covering voyage and wages, and everything else is governed by the maritime law of the state where the contract is entered.

Petitioner's counsel conceded that the Articles called for an "indefinite service". They also failed to set forth the places and duration of the voyage. Thus they were vague, ambiguous and void under our law and are to be liberally interpreted in the seaman's favor.

In *"The Quoge"*, 261 Fed. 414, affirmed 266 Fed. 696, 4 Cir., 1920, Articles, calling for a voyage from Baltimore to any port in the world, wherever the Master directs, and return to the United States, not exceeding six months, were vague and uncertain as to the voyage and the services contemplated. The law is so well settled that a further citation of cases is unnecessary.

In this case, the Articles were even more repugnant in failing to state the extent of the voyage or its duration. The provision that the seaman could be discharged in any port, for any reason, on seven days' notice, is unconscionable and a flagrant disregard of American law on the subject.

As this Court held in *Garrett* v. *Moore-McCormack*, 317 U. S. 239, 63 S. Ct. 246, while considering the validity of a release, a seaman "may not be technically incapable of signing a contract", yet, as wards of the Court, any contract signed by them will be scrutinized closely and if any advantage to the shipowner is not compensated by extraordinary benefits, it will be set aside as inequitable.

Here we have an inequitable contract and its provisions were properly interpreted for the benefit of the seaman, and the finding below that the Danish law was not binding on the respondent should not be disturbed.

Thus no issues of fact or law are presented in this case which differ from the rulings in the *Kyriakos* and *Taylor* cases.

On the contrary, the matters herein were decided in harmony with our public policy, our laws, and the principles established by this Court, leaving no issues to be reviewed under this petition.

POINT IV

The cases cited by petitioner create neither conflict nor doubt as to the soundness of the decision below and require no action by this Court.

Petitioner offers three cases (p. 6) which he claims are in conflict with the decision below. Neither the facts nor the precise questions of law therein bear the slightest resemblance to the subject situation which would justify any inference of disharmony in basic principle.

In *New York Central R. R. Co.* v. *Chisholm*, 268 U. S. 29, 45 S. Ct. 402 (1925), an American railroad worker, injured while his train was in Canada, sued under the Federal Employer's Liability Act and recovery was denied.

The precise point at issue was the absence of any express authority in the F. E. L. A. for extraterritorial jurisdiction or circumstances inferring such purpose.

Both elements are present in the Jones Act.

As Mr. Justice Stone pointed out in *O'Donnel* v. *Great Lakes Co.*, supra, the circumstances of a seaman's services necessitated the extension of the act to include injuries on the high seas or in domestic and foreign ports. It is also implicit in the very words of the act "in the course of his employment", that the nature of the services and not the

place of injury should govern. Thus the fallacious inference drawn from the *Chisholm* case has no application herein.

Jamison v. *Encarnacion*, 281 U. S. 635, 50 S. Ct. 440 (1930), offers no conflict in facts or law with the issues in the subject application.

A stevedore who was assaulted by his foremen received benefits under the Jones Act, thereby enlarging its scope.

Petitioner makes no greater claim for this case than it affirmed the necessity of establishing negligence under the Jones Act.

Since the record in the subject matter discloses proof, charge and findings of negligence, no disharmony can be found between the two cases.

Cortes v. *Baltimore Insular Line*, 287 U. S. 367, 53 S. Ct. 173 (1932), petitioner argues, holds that some element of negligence must occur in the United States to secure jurisdiction under the Jones Act. That is not correct.

The facts in the *Cortes* case concern an American seaman in American waters, and how petitioner arrived at this unique conclusion escapes us. It is contrary to the express ruling of this Court in *O'Donnel* v. *Great Lakes Co.*, supra, which held that the nature of the service, and not the place of injury, governed.

In *Plamals* v. *S. S. Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 151 (1928), an injured foreign seaman, who had signed on in a foreign port, libeled the vessel.

The Court held that the Jones Act contains no authority to secure jurisdiction by way of a libel.

Naturally, the applicability of the Jones Act was not at issue and was not ruled upon.

But petitioner's conclusion that this Court had left open the question of whether the "Law of the Flag" or our statutes apply to foreign seamen and foreign vessels is negated by the argument and cases cited in Point II, supra.

Uravic, Administratrix v. *F. Jarka Company, Inc.*, 282 U. S. 234, 51 S. Ct. 111 (1931), reversing 252 N. Y. 530, overruled the archaic view entertained by the Court of

Appeals of the State of New York and enlarged the scope of the Jones Act to give relief to longshoremen injured on foreign vessels.

On page 9 of his brief, petitioner quotes Mr. Justice Holmes as authority for the novel conclusion that this case held that the applicability of the Jones Act to foreign seamen was left open.

On the contrary, the clear and unmistakable import of the words

> "*If* it should appear that, by valid contract or special circumstances, seamen on a foreign ship *should not* be protected by the statute, it will be time enough to consider the exception when it is presented" (emphasis ours)

indicates that Mr. Justice Holmes considered the Jones Act applied to seamen (not exclusively American seamen) on foreign vessels.

The conclusion is unmistakable that it is only "*if*" at a later date some "*special circumstance*" or "*valid contract*" were to be presented, it would then be time to consider the *exception.*

It is respectfully submitted that such circumstances do not prevail in this case and this Court did not find those circumstances in *Gerradin* v. *United Fruit,* 51 F. 2d 417, cert. den. 287 U. S. 642; *Gambera* v. *Bergotty,* 132 F. 2d 414, cert. den. 319 U. S. 742, and in the *Kyriakos* and *Taylor* cases, supra.

In *"The Paula"*, 91 F. 2d 1001, cert. den. 302 U. S. 750 (1937), a German seaman signed on in Chile, on a Danish vessel, for a voyage to the United States. The vessel was libeled.

The two vital and pivotal factors of signing on in Chile and libeling the vessel distinguish *"The Paula"* from the subject facts. Besides, a reading of the record in this prior action demonstrates that not all the pertinent facts were in the testimony, preventing a definitive ruling.

In *Sonneson* v. *Panama Transport Co.,* 298 N. Y. 262, cert. den. 337 U. S. 919, the record in the State Court indi-

cates that the applicability of the Jones Act was not questioned by the defendant owner. Although flying a Panamanian flag, it was a subsidiary of the Standard Oil Company of New Jersey and was definitely liable at least under the doctrine of *Gerradin* v. *United Fruit*, supra.

For some unaccountable reason, the State Court, although the point was not at issue, ruled that it would not give effect to the Jones Act. Such limitation, by a State Court, of its own interests, does not concern this Court and certiorari was properly denied. This obvious divergence is of local concern and is of no import herein.

It is noteworthy that in *Resigno* v. *Jarka* (1928), 248 N. Y. 225, the New York Court of Appeals refused to give relief to another of its citizens, a longshoreman. (No application for certiorari.)

In *Uravic* v. *Jarka*, supra, on the same facts, the New York Court again refused relief to its citizens.

But this time this Court granted certiorari and unanimously reversed the State Court.

Nevertheless, in the *Sonneson opinion* (p. 36, pet. brief) Judge Desmond cites the *Resigno* case as authority for the decision, totally ignoring this Court's reversal of the *Resigno* State doctrine in the *Uravic* case.

O'Neill v. *Cunard White Star Ltd.*, 160 F. 2d. 246, concerns a foreign seaman aboard a foreign vessel with articles signed in a foreign port. The essential jurisdictional element of signing on in the United States is missing.

The other cases, cited (p. 12, petition) but not discussed, do not support petitioner's unwarranted assumption that they stand for the proposition that the "law of the port has been applied *only* when the events occurring on board foreign vessels in our ports were of such nature as to effect the peace and tranquillity of the port." (Emphasis ours.)

The Scotland and *The Belgenland*, supra, unequivocally disaffirm this theory. They applied congressional statutes to foreign owners covering collisions on the high seas. The dicta regarding wages has since been reversed in the *The Bark Eudora* and *Strathearn* cases. Even if the juris-

dictional base had not been subsequently enlarged by this Court, these cases support respondent's position in requiring foreign owners, who can secure the protection of our laws, to be equally amenable to its obligations.

Wildenhus's Case, 120 U. S. 1, and *U. S.* v. *Rodgers*, 150 U. S. 249, cover criminal matters. The correct exercise of police powers cannot be interpreted to represent a limitation of jurisdiction only to those instances where peace and tranquility is involved.

In *Thompson Towing and Wrecking Association* v. *McGregor*, 207 F. 209, 6 Cir., 1913, a Michigan seaman, serving on a vessel of Michigan registry, recovered for an injury in Canadian waters, in an action antedating the Jones Act. Here, too, petitioner's lex loci delicti argument is nullified. The decision is in harmony with the Jones Act and the Death on the High Seas Act. There is no conflict.

In *Grand Trunk Ry. Co.* v. *Wright*, 21 F. 2d 814 (1927), a Canadian seaman, on a Canadian operated ferry (American ownership not pertinent), was injured in American waters. It was held that United States courts had no jurisdiction. The element of signing on in the United States was missing. The affirmance by this Court in 278 U. S. 577, appeared to be based on the grounds that the Statute of Limitations had expired.

Thus none of the cases cited are in conflict with the rule herein.

Petitioner has also extracted and cited a number of quotations from the prevailing and dissenting opinions in the *Kyriakos*, *O'Neill* and *Taylor* cases. Since these quotations have been culled out of context, they do not accurately reflect the opinions or the thought processes of the Judge, unless the import of what preceded and followed is likewise set forth.

For example, after citing the old "Law of the Flag" cases, petitioner, in his brief(p..34), states that this rule is "very much alive" and quotes a small portion of a paragraph of Judge A. N. Hand's opinion in the *Kyriakos* case.

The quotation refers to the existence of the rule "in the absence of any statute". We have a statute herein which supersedes the rule under appropriate factual and jurisdictional conditions.

The lengthy paragraph from which that short quotation was culled is not continued, but if it were, the Court could see that in Judge Hand's opinion the "Law of the Flag" was superseded by the Jones Act, and very cogent reasons were offered for its application.

We are rather puzzled by petitioner's peroration on page 13 of his petition wherein he claims that "social justice" demands that the "Law of the Flag" be applied, so that a seaman can get relief from a Consul; otherwise, a seaman's rights under Danish law for something akin to compensation would be retarded. He then cites *Farrell* v. *United States*, 336 U. S. 511, without stating its import.

If it were true that the Danish law is more liberal to the seaman, then why is petitioner objecting to liability under the alleged less liberal Jones Act?

And what of those foreign vessels whose governments do not offer "social justice"? Would petitioner agree that they should be subject to the Jones Act?

Neither the cases cited nor the argument presented by petitioner furnish a sound base for review herein.

The true reason for this application can be found in the rather novel fifth "reason" assigned for review herein. Petitioner says (p. 13):

> "As a result, *foreign shipowners*, operating vessels which call at United States ports, *of which there are a great number*, have been unable to determine the exact extent of their liability to foreign seamen signed on in the United States for personal injuries occurring aboard their vessels." (Emphasis ours.)

It would have been more accurate had he said that such foreign owners wish to evade the liability which American law imposes on all who use our ports. Certainly the language in the *Kyriakos* and *Taylor* cases, supra, is understandable even to a layman. The exact extent of their

liability is clear. What petitioner is seeking is not a clarification, but a reversal, of policy.

This statement, coming from the petitioner, is particularly significant since it confirms our contention that the interested foreign owners, "of which there are a great number", are not isolated and transitory visitors, but are regular carriers in our shipping trade, constantly hiring seamen in our ports, seeking only those who, they hope, will not be subject to our laws. The stake evidently is substantial, for an appeal on so small a judgment as herein is not lightly undertaken.

Thus these "large numbers of foreign shipowners" want to have their cake and eat it too, in being free to compete with our Merchant Marine and free from the liabilities imposed by our laws.

CONCLUSION

There being no conflict or disharmony between the decision below and the rule as stated in prior adjudications, the petition should be denied.

Dated: New York, September 10, 1952.

Respectfully submitted,

ARCHIBALD MCGRATH,
Counsel for Respondent,
39 Broadway,
New York City.

RICHARD M. CANTOR,
GEORGE HALPERN,
of Counsel.